

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
OLSON BROS. MANUFACTURING) CASE NO. BK80-2674
COMPANY, INC.,)
)
DEBTOR)

MEMORANDUM OPINION

In this Chapter 11 proceeding the matter before me is the application by the Trustee to remove Theodore V. Olson as President of the Corporation.

This Chapter 11 began on December 10, 1980. On December 18, 1980, Wells Fargo Business Credit, Inc., the major secured creditor, objected to the debtor's use of inventory and accounts receivable which was security for Wells Fargo's loan of approximately \$4,800,000. On January 6, 1981, Wells Fargo also moved for the appointment of a trustee.

Prior to hearing of either matter, the debtor and Wells Fargo entered into a stipulation which provided for the use by the debtor of the inventory and receivables but which provided that a Trustee would be appointed who would have the usual duties provided by statute and "specifically shall make all final management decisions for the Debtor." However, Mr. Olson could not be terminated without further order.

On January 23, 1981, Robert F. Stahl, Jr., was appointed Trustee.

On February 27, 1981, the Trustee applied for an order terminating the employment of Mr. Olson as President. The Official Creditors' Committee and Wells Fargo have joined in this application. Because of the suggested urgency of the matter, a preliminary hearing was scheduled with the understanding that either party could present additional evidence at a later time.

The posture of the present litigation is somewhat unusual. The question is not whether a Trustee should operate the debtor. The stipulation resolves that issue. Therefore, the question presented by the evidence is whether the trustee is to be given complete discretion as to the operation of the business. The evidence by the Trustee suggests a tension between the Trustee and Mr. Olson which inhibits the exercise of the Trustee's discretion. At the same time, the evidence shows that Mr. Olson has valuable engineering experience and business contacts which could be of help in the rehabilitation of the debtor.

The evidence discloses that Mr. Olson has used Trustee-account funds for purposes not previously authorized by the Trustee. In addition, Mr. Olson's request for payment of insurance premiums on a certain policy had no relation to the debtor's rehabilitation. The inability of Mr. Olson to produce records of the debtor for the Trustee's review also is a source of concern.

Alternately, the issue is what is best for rehabilitating the debtor, if possible, and also safeguarding the rights of creditors with a view to repayment in some manner.

The ideal situation under the circumstances would be for the Trustee to have absolute management discretion with the benefit of the experience and knowledge of Mr. Olson. In the Trustee's view, as well as the Creditors' Committee's and Wells Fargo's view, this does not appear possible while Mr. Olson remains as President. A related need is that third parties must be able to deal with the debtor with confidence that management is united in its objectives.

On balance, the Court is compelled to the conclusion that Mr. Olson must be removed as President of the debtor until further order. Jurisdiction is retained to reexamine the matter at a future time.

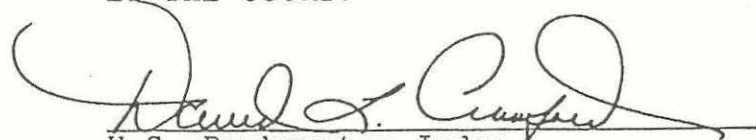
The Trustee has asked for an injunction against Mr. Olson prohibiting him from coming upon the business premises of the debtor except upon invitation of the Trustee. This request is denied at this time although the Court will entertain the application at a future time if there is interference by Mr. Olson, directly or indirectly, with the Trustee's management of the debtor.

The Trustee has also asked for authority to retain Merrimac Associates, Inc., as consultants. This application is granted subject to further order.

A separate order is entered in accordance with the foregoing.

DATED: March 6, 1981.

BY THE COURT:


U.S. Bankruptcy Judge

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